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SUBJECT: ZAMBIAN NGO BILL--CIVIL SOCIETY AND DONOR CONCERNS

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¶1. (SBU) Summary: An NGO Bill that the Zambian government presented to Parliament on July 17 has met significant opposition from civil society. NGO representatives noted they were not consulted in the drafting process and raised concerns about the amount of power the Bill provides to the government over NGO activities. Donor community representatives expressed concerns about the proposed Bill to the Minister of Justice on July 31, and he responded that he was willing to consider their detailed and constructive suggestions. The Ambassador raised the possibility that the Bill might affect Millennium Challenge Account governance indicator assessments. End summary.

Background

¶2. (U) Since 1997 Zambian non-governmental organizations (NGOs) have advocated for a separate law that distinguishes NGO registrations from other organizations like clubs, churches, and political parties. Currently, registration of all these organizations falls under the Zambian Societies Act, managed by the Ministry of Home Affairs. In 2000, the Government of the Republic of Zambia (GRZ) attempted to put forth an NGO bill to "register and regulate all NGOs in Zambia." This bill was met with significant opposition from civil society and it was dropped.

Recent Developments

¶3. (SBU) On July 17, Minister of Justice, George Kunda presented to Parliament a Non-Governmental Organizations Bill "as a message from the President." Despite the fact that NGOs have been seeking an NGO law, no one from civil society or the public had participated in the development of the Bill before July 17. The Parliamentary Committee on Legal Affairs, Governance, Human Rights, and Gender Matters is reviewing the Bill and will make recommendations to Members of Parliament on August 3, 2007. This period from July 17 to August 3 is the only time the GRZ has given the public to address any components of the Bill and they must do so by soliciting an appointment with the Committee members.

¶4. (U) According to press reports, the GRZ argued that the current Bill is necessary because, although the government is always held accountable, NGOs do not properly account for the money they receive or for their expenditures. The Minister of Information and Broadcasting, Mike Mulongoti, stated that it is "necessary to have a legal framework to regulate their conduct, because some of them seem to have been set up specifically to oppose the government in everything." Mulongoti also noted, "After all, even the money they [NGOs] use to fund their activities is taxpayer's money elsewhere, just like we use Zambian taxpayers' money."

¶5. (U) The Bill establishes an NGO Board (funded by Parliamentary

allocations and managed by the Ministry of Home Affairs) that will be composed of ten part-time members (occupying three year positions), all appointed by the Minister. Only two positions will be appointed by the Minister to represent "the diverse areas of interest of the non-governmental organisations." Among other functions, the Board will "regulate the work, and the area of work, of non-governmental organisations operating in Zambia," review quarterly and annual NGO reports, and establish guidelines for auditing NGO's accounts. The Board will also advise the GRZ on NGOs' activities, "provide policy guidelines... for harmonizing their activities to the national development plan for Zambia," and "approve the code of conduct...for the self regulation [of NGOs] and their operations in Zambia." Furthermore, the Board only requires a quorum of six to act (meaning decisions could be completely GRZ-led) and has the power to fine and/or imprison up to five years for certain offenses, or to even suspend or cancel an NGO's Certificate of Registration -- denying its authorization to operate in Zambia.

16. (SBU) This Bill will effectively render NGOs subject to the GRZ's interests, which may conflict with donor interests. It gives a significant amount of power to the Board to reject new NGOs or shut down existing ones. For example, the Board can reject an application if an NGO's "proposed activities or procedures... are not in the national interest."

17. (U) The Bill requires that NGOs reveal their funding sources and it also gives the Minister power to determine the proportion of funds an NGO can use towards its administrative costs. Additionally, it assigns the NGO Board with the responsibility to distribute the assets and liabilities of any NGO that ceases to exist. It also states that the "Minister is empowered to set the terms and conditions for the importation and use of any equipment required by an NGO for its activities." International NGOs with activities in Zambia will not be able to operate without registering under this Act.

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Civil Society Response

18. (U) The Zambia Council for Social Development (ZCSD) took the lead in organizing a civil society response. ZCSD, the Civil Society for Poverty Reduction (CSPR) and the Non-governmental Organizations' Coordinating Council (NGOCC), an NGO umbrella group, made a joint statement opposing the Bill on the basis of its non-inclusive drafting process. The independent daily Post newspaper published this statement on Sunday, July 15. The ZCSD held a meeting on July 19, which about 50 people attended (approximately 10 from the donor community; the remainder from NGOs and international NGOs) and discussed a strategy and work plan, as well as the need for a clear, focused message dealing with the critical issues of the Bill and not just the process of how the Bill was developed (without consultation or input from civil society). Furthermore, the NGO community recognized that it will be competing for attention from the media, the public, and MPs, with the ongoing debate on the constitutional reform process.

19. (U) On July 27, the ZCSD shared a legal response addressing specific clauses of the Bill with civil society as well as the donor community. ZCSD presented the response to the parliamentary committee reviewing the Bill on July 30. In addition to the issues of contention highlighted above (paras 5, 6 and 7), the response from ZCSD points out that the Bill calls for the Board to audit NGOs with no provision for an auditor or accountant to be on the Board and that the Bill omits the terms "human rights" and "advocacy" from the definition of NGO activities. ZCSD's legal response concludes that the Bill "does not create any facilitative process in the work of NGOs but rather is just a regulatory framework for the operations of NGOs in the country."

110. (SBU) On Saturday July 28, the ZCSD organized a public street concert to raise awareness about the Bill and collect signatures for a petition. Members of civil society also picketed at Parliament on July 31. Leadership of other NGOs such as the YWCA, Transparency

International and Southern African Centre for the Constructive Resolution of Disputes (SACCORD) told EmbOffs that they presented position papers and/or recommendations to the parliamentary committee reviewing the Bill on July 30. The recommendations made by the YWCA were very pointed and thorough. Among a list of 20 recommendations, the YWCA proposed that the NGO Board require a quorum of "50 percent NGOs and 50 percent government," that the Board only request annual (vice quarterly) reports from NGOs, that the ZCSD fill the role of the Zambian Congress of NGOs proposed by the Bill, and that the NGO Board not have the power to determine an NGO's administrative spending since "this is always agreed upon with the various cooperating partners."

Donor Response

¶11. (SBU) On July 26, senior representatives from the donor community met at UNDP offices in Lusaka to discuss the NGO Bill and prepare a strategy for a July 31 briefing with the Minister of Justice, George Kunda. Discussion focused on issues that need to be clarified within the Bill; the Bill's problematic areas; the negative repercussions the Bill may have in the international arena for assessment of GRZ's levels of accountability, democracy, and governance; and the communication strategy to be used when meeting with Kunda. The donor group selected three representatives to meet with Kunda on July 31: Ambassador Martinez, the Irish Ambassador (representing the EU presidency on behalf of Portugal) and the UN Resident Coordinator.

¶12. (SBU) At the meeting, Kunda was joined by Zambian Attorney General Malila, along with several staffers from the Ministry's Parliamentary Committee (who are working with parliamentarians on revisions to the draft language). The nearly ninety-minute meeting was frank, yet cordial. The three donor reps presented many of the same concerns raised by civil society -- with special emphasis on the need to rethink the composition of the NGO Board, the inappropriate involvement of government in the administrative operations of NGOs, and the unnecessary reporting burdens that the Bill imposes.

¶13. (SBU) The donor representatives stressed that the ramifications of the Bill went beyond a national vision for regulating NGOs and could have a negative impact on many of the indicators used by the UN and EU member states, and also by the USG, to measure Zambia's progress on governance issues. (Note: the Minister and the Attorney General paid particular attention when the Ambassador spoke of how an overly restrictive NGO Bill could negatively impact Zambia's MCA indicators -- even reading out several indicator descriptions from the "Ruling Justly Category" to make her point. End note.)

¶14. (SBU) Both the Minister of Justice and the Attorney General thanked the donor reps repeatedly for raising many issues that they said had, in some instances, simply been overlooked, drafted

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incorrectly, or needed more consultation. They said they would "take on board" and seriously consider the following suggestions:

- the composition of the NGO Board should be equally divided between government and NGO representatives (five and five, rather than eight and two), with a quorum of six required to authorize any decisions by the Board.

- the Minister of Home Affairs should not have the authority to determine what percentage of an NGO's budget is to be devoted to administrative costs, if the NGO receives no funding from the GRZ.

- the GRZ should continue to allow NGOs to submit annual reports and not require quarterly reports since the Board would be absolutely unable to cope with examining nearly 50,000 reports from approximately 12,000 NGOs.

- the Bill should not prescribe deregistration for an NGO that loses its paper registration certificate as all records of any NGO's registration would be available electronically and a duplicate could

be easily issued.

Comment

¶15. (SBU) The underlying tone of the Bill is defensive. The GRZ seems most concerned with regulating and controlling civil society, in contrast to the 2000 Malawi NGO Act, which seeks "to provide for the rights and obligations of Non-Governmental Organisations in Malawi, to promote the development and values of strong independent civil society..." Furthermore, the timing of the NGO Bill (introduced in the midst of debate over the constitutional reform process) and the lack of consultation with civil society lead us to wonder if this Bill may have other motives. President Mwanawasa's recent attack on NGOs in early July, in which he stated that civil society should not be allowed to "hijack" the constitution-making process, echoes the defensive tone of the NGO Bill.

¶16. (SBU) In response to concerns over the manner in which the Bill has been pushed through quickly without consulting civil society, Kunda stated that "intention of the law was not to gag NGOs." Both the Minister and Attorney General insisted that, due to the legislative calendar, if the Bill is not passed by August 10, it will lapse, with the possible result that it would not be reintroduced this year or even next year. Given the prevalent bureaucratic inertia surrounding most government programs, in theory this sense of urgency is refreshing. We will be much more confident in the GRZ's good intentions if it changes the Bill in response to concerns raised by donors and civil society.

MARTINEZ